IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.418 OF 2004

M/s.Sanchay Fincom Ltd. ..Petitioners.

Vs.

Mr.Sushil S. Mahesh & Anr. ..Respondents.

Mr.R.D.Dhanuka with Mr.A.T.Dhanuka and Ms.K.Soni for the Petitioners.

Ms.S.R.Kumbhar for the Respondents.

CORAM: S.U.KAMDAR, J.
DATED: 22nd DECEMBER, 2004

P.C. :

The award passed by the Appellate Bench of the Stock Exchange is sought to be challenged on the ground that there is no arbitration agreement between the parties since the transactions which are subject matter of reference are not entered into between the Petitioner and the Respondents herein and, therefore, the said award is liable to be set aside.

2. The Lower Bench of the Tribunal has passed an award on 13.3.2004 inter-alia holding that there is a transaction between the Petitioner and the Respondents in respect of shares sold and delivered. This finding was challenged by the Petitioner by

filing an Appeal. The Appellate Bench of the Tribunal has dismissed the Appeal holding that there were transactions of sale and purchase of shares by and between the Petitioner and the Respondents herein. The Lower Bench as well as the Appellate Bench of the Stock Exchange has come to the aforesaid finding on material which was produced before them including the direct delivery of the shares from the different demat account of the Respondents to the demat account of the Petitioners herein. The learned arbitrators have also relied upon the material evidence which was produced indicating that M/s.Padmanandi Investment was in fact acting as sub-broker. The learned arbitrator has relied upon the trade files of the accounts which indicates that some transactions have been routed through M/s.Padmanandi Investment. The learned arbitrator has also considered the fact that Mr.Mehta of M/s.Padmanandi Investment was an employee of the Respondent broker and was also carrying on business as a sub-broker.

3. It is a settled law that once the transaction is carried out between the petitioner and the respondent herein the same is governed by Bye-Law 248 of the rules, regulations and bye-law of the

Stock Exchange and the said bye-law inter-alia contains an arbitration agreement by and between the parties. In my opinion, whether there was a transaction between the Respondent and the Petitioner directly or through M/s.Padmanandi Investment or that there is an independent transaction between the Petitioner and the said M/s.Padmanandi Investment is an issue of fact. The arbitrators have given their finding on the aforesaid issue of fact and the same is fixed and binding. In my opinion, such finding of fact cannot be interfered with under section 34 of the Arbitration and Conciliation Act 1996. It is not possible for me to re-appreciate the evidence and the material produced and come to a different conclusion as to whether there is a direct transaction or there is a transaction through M/s.Padmanandi Investment.

4. In the aforesaid view of the matter, I do not find any merit in the Petition and, thus, I dismiss the same. There shall be no order as to costs.